92-597

Supreme Court, U.S.
FILED
OCT 5 1992
OFFICE OF THE CLERK

No. A-

IN THE
Supreme Court of the United States

OCTOBER TERM 1992

THE 1975 SALARIED RETIREMENT PLAN
FOR ELIGIBLE EMPLOYEES
OF CRUCIBLE, INC., ET AL.,
Petitioners,

v.

DAVID A. NOBERS, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Of Counsel:

ANTHONY J. DIBUONO
COLTEC INDUSTRIES INC
430 Park Avenue
New York, New York 10022
(212) 940-0574

*WILLIAM H. POWDERLY, III
PAULA E. GANZ
JOAN C. ZANGRILLI
JONES, DAY, REAVIS & POGUE
500 Grant Street
Pittsburgh, PA 15219
(412) 394-7921

**Counsel of Record*

QUESTIONS PRESENTED FOR REVIEW

The Employee Retirement Security Act of 1974 ("ERISA") mandates exclusive federal court jurisdiction for most of the claims it governs, and therefore state courts are *without jurisdiction* to entertain most claims governed by ERISA. With unique clarity, this case presents questions raised by ERISA's jurisdictional scheme, and the power of the lower federal courts to implement that scheme. Most generally stated, the question is whether the statutory exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283, permit injunctions to enforce ERISA's exclusive federal jurisdiction?

More specifically, do the statutory exceptions to the Anti-Injunction Act permit the lower federal courts to: (1) enjoin state court litigation that is being conducted without jurisdiction (in violation of ERISA)?; (2) enjoin ERISA plan participants from evading the administrative remedies provided under ERISA and the terms of the plans?; (3) enjoin a state court proceeding to protect or effectuate a federal declaratory judgment issued at the request of ERISA plan fiduciaries?

LIST OF PARTIES

Petitioners (Plaintiffs/Appellants below) are ERISA plans and their administrators. The Petitioner ERISA plans, and ERISA plan administrators are: The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. (an ERISA defined benefit pension plan); The Colt Industries Operating Corporation Severance Plan for Salaried, Nonunion Employees (an ERISA welfare benefit plan); Coltec Industries Inc (administrator of the foregoing ERISA plans); The Pension Plan for Collectively Bargained Employees of Midland Operations of Crucible, Inc. (an ERISA defined benefit pension plan); The Supplemental Unemployment Benefit Plan for Collectively Bargained Employees of Midland Operations of Crucible Inc (an ERISA welfare benefit plan); The Severance Allowance Plan for the Collectively Bargained Employees of Midland Operations of Crucible Inc (an ERISA welfare benefit plan); and The Retirement Committee of Coltec Industries Inc (administrator of the remaining ERISA plans).

Respondents (Defendants/Appellees below) are four individuals, David A. Nobers, Robert R. Campbell, Gasper P. Porto, and Gary T. Weekley. To the best knowledge and information of Petitioners, Respondents are participants of Petitioners The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc., and have received all the benefits to which they are entitled under The Colt Industries Operating Corporation Severance Plan for Salaried, Nonunion Employees.

LIST OF PARENT COMPANIES AND NON-WHOLLY OWNED SUBSIDIARIES

The stock of Coltec Industries Inc has been publicly traded since April 1, 1992. Coltec Holdings Inc owns 36.1% of the stock of Coltec Industries Inc. The stock of Coltec Holdings Inc is not publicly traded; however, Morgan Stanley Group, Inc., a publicly traded company, owns a controlling interest in Coltec Holdings Inc.

Garlock Inc is a wholly owned subsidiary of Coltec Industries Inc. Garlock Inc has four subsidiaries that are not wholly owned: Garlock Bearings Inc, Garlock de Mexico, S.A., Louis Mulas Sucs., S.A., and Garlock Pty. Ltd. Minority interests in each of these four subsidiaries are privately held by foreign investors.

Coltec Industries Inc is the successor of Colt Industries Inc. Prior to December 31, 1982, Crucible Inc was a wholly owned subsidiary of Colt Industries Inc. Certain former operations of Crucible Inc are now held by Crucible Materials Corp, a nonpublic company that is not affiliated with Coltec Industries Inc.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

THE OPINION BELOW

This petition for writ of *certiorari* is from a judgment of the Court of Appeals for the Third Circuit, entered July 6, 1992, in *The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc.*, 968 F.2d 401, 61 U.S.L.W. 2059, 15 Emp. Benefits Cas. (BNA) 197, 122 Lab. Cas. (CCH) ¶10,268, 1992 U.S. App. LEXIS 15095, 1992 WL 150922 (3d Cir. July 6, 1992), *reprinted in* Petitioners' Appendix at 1a [hereinafter "App."]. The Third Circuit judgment was entered in an appeal of an unreported order of the United States District Court for the Western District of Pennsylvania. (App. at 24a.)[1]

[1] The following cases are related: *Nobers v. Crucible, Inc.*, No. 82-1846 (W.D. Pa.), *aff'd without opinion*, 722 F.2d 733 (3d Cir. 1983) (*Nobers I*); *Colt Industries v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986); *Nobers v. Crucible, Inc.*, No. 843-1984 (C.P. Beaver County), *order dismissing case rev'd*, 545 A.2d 367 (Pa. Super. Ct. 1988), *appeal denied*, 559 A.2d 38 (Pa. 1989) (*Nobers II*).

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the Third Circuit's judgment by writ of *certiorari* pursuant to 28 U.S.C. § 1254(1). The district court below had jurisdiction pursuant to section 502(a)(3) and (e)(1) of the Employee Retirement Income Security Act of 1974, Pub.L.No. 93-406, 88 Stat. 891 (codified at 29 U.S.C. § 1132(a)(3) and (e)(1)) [hereinafter "ERISA"]. *Certiorari* is appropriate both because this case raises an important question of federal law which has not been, but should be, settled by this Court, and because the Third Circuit's decision is in conflict with decisions of the Sixth and Second Circuits, while the Fifth Circuit has issued one decision in accordance with the Third Circuit and another decision that is in indirect conflict.

RELEVANT STATUTORY AUTHORITIES

The Anti-Injunction Act, 28 U.S.C. § 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

ERISA section 502(e)(1) ("Civil Enforcement"):

> (e) *Jurisdiction*
>
> (1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

ERISA section 502(a)(1)(B) ("Civil Enforcement"):

> (a) *Persons empowered to bring a civil action*
>
> A civil action may be brought—
>
> (1) by a participant or beneficiary—

* * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan[.]

ERISA section 502(a)(3) ("Civil Enforcement"):

(a) *Persons empowered to bring a civil action*

A civil action may be brought—

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

STATEMENT OF THE CASE

Background

This petition for writ of *certiorari* arises out of a suit for declaratory judgment and injunctive relief filed in the United States District Court for the Western District of Pennsylvania by Petitioners, who are ERISA plans (the "Plans") and their administrators. The factual and procedural history of this litigation is summarized in the opinion of the Court of Appeals for the Third Circuit. (App. at 4a-7a.)

Petitioner Plans provide benefits to former and current employees of Crucible Inc ("Crucible") (and Crucible's corporate successors). In 1982, Crucible announced the closing of its steelmaking facilities at Midland, Pennsylvania. The Midland facilities had employed workers who were members of the United Steelworkers of America, as well as salaried workers who did not belong to any union. Two separate sets of ERISA plans cover Crucible's union employees, and its salaried non-union employees.[2]

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[2] The plans covering Crucible's union employees include Petitioners The Pension Plan for Collectively Bargained Employees of Midland Operations of Crucible, Inc., The Supplemental Unemployment Benefit Plan for

Respondents are former employees of Crucible who, in the course of their employment, had been promoted from union to salaried non-union positions, and who remained in salaried non-union positions throughout the remainder of their employment. Shortly after the Midland closing was announced, Respondents brought a class action lawsuit in federal district court, seeking to compel Crucible to demote them back into the union so that they could receive benefits under the Collective Bargaining Unit Plans rather than the Salaried Plans. *Nobers v. Crucible, Inc.*, No. 82-1846 (W.D. Pa.), *aff'd without opinion*, 722 F.2d 733 (3d Cir. 1983) (*Nobers I*) (App. at 28a.) The district court found that Crucible had no contractual obligation under the collective bargaining agreement (neither express nor arising from past practice) to demote Respondents. The district court also dismissed Respondents' ERISA claim for failure to exhaust administrative remedies, and instructed Respondents to apply to the administrators of the Collective Bargaining Unit Plans. Respondents meanwhile commenced receiving benefits under the terms of the Salaried Plans, and indeed *applied* for Salaried Plan benefits.

However, Respondents, ignoring the district court's instruction to apply directly to the Collective Bargaining Unit Plans, instead filed suit in the Court of Common Pleas of Beaver County, Pennsylvania (*Nobers v. Crucible, Inc.*, No. 843-1984 (C.P. Beaver County), *order dismissing case rev'd*, 545 A.2d 367 (Pa. Super. Ct. 1988), *appeal denied*, 559 A.2d 38 (Pa. 1989) (*Nobers II*) (App. at 61a, 41a, 7a)), seeking the same relief they had sought in *Nobers I*. Crucible and its parent company, Colt Industries Inc ("Colt"), as defendants in the state court action, twice sought to remove *Nobers II* to federal court (from which it has twice been remanded) and

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Collectively Bargaining Employees of Midland Operations of Crucible Inc, and The Severance Allowance Plan for the Collectively Bargained Employees of Midland Operations of Crucible Inc (collectively the "Collective Bargaining Unit Plans"). The plans covering Crucible's salaried, non-union employees include Petitioners The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. and The Colt Industries Operating Corporation Severance Plan for Salaried, Nonunion Employees (collectively the "Salaried Plans").

sought an injunction of *Nobers II* on *res judicata* grounds (which was denied).

Throughout this time, Respondents have never presented a claim to the Plans' administrators, as they were instructed to do by the district court in *Nobers I*. Therefore, Petitioners have invoked the equity jurisdiction of the district court under section 502(a)(3) and (e)(1) of ERISA, to obtain guidance regarding whether Respondents are already receiving all the benefits to which they are entitled from the proper Plans. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 112 (1989). Petitioners also requested the district court to provide injunctive relief to compel Respondents to assert their claims against the proper parties in the proper forum in compliance with ERISA's substantive and jurisdictional provisions: (1) claims for benefits must be asserted against the applicable Plans and may be alleged in either state or federal court, but only after exhaustion of administrative remedies; whereas (2) claims against an employer (Crucible) or other third party (such as Colt) for interference with rights to benefits entitlements must be asserted in federal court pursuant to ERISA section 510. *See infra* Part A.

The district court has exclusive jurisdiction of Petitioners' requests under ERISA section 502(a)(3) and (e)(1). Petitioners' request for declaratory judgment is pending before the district court. The district court prospectively denied injunctive relief, including injunctive relief to enforce any declaratory judgment the district court may ultimately issue on behalf of Petitioners, and entered final judgment as to that holding. (App. at 24a, 23a.)

Appellate Decision

On appeal, the Third Circuit held that the claims alleged by Respondents in the Pennsylvania courts in *Nobers II* are *both* (1) preempted by ERISA under ERISA section 514(a) *and* (2) subject to exclusive federal jurisdiction under ERISA section 502(e)(1). (App. at 4a.)[3] The Third Circuit then

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[3] It is equally true that Petitioners' lawsuit for declaratory judgment and injunctive relief – the action from which this petition arises – is *both*

noted that "the Pennsylvania court's assumption of jurisdiction over *Nobers II* is in violation of ERISA's supersedure provisions." (App. at 14a.) More accurately, the Pennsylvania court's assumption of jurisdiction over *Nobers II* is in violation of ERISA's mandate of exclusive federal jurisdiction, *see infra* Part A; the point is not whether the Pennsylvania courts are disposed to apply federal law, (App. at 14a), but rather that the Pennsylvania courts lack jurisdiction altogether. However, the Third Circuit held, erroneously, that the Anti-Injunction Act, 28 U.S.C. § 2283, renders the federal courts powerless to enforce ERISA's exclusive federal jurisdiction with injunctive relief. Instead, the Third Circuit merely suggested that "[p]erhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding." (App. at 14a.)

The Third Circuit failed to recognize that the statutory exceptions to the Anti-Injunction Act permit the injunctive relief that Petitioners seek. Indeed, two other Circuit Courts, *see infra* Part E, have held that injunctive relief is available under the statutory exceptions to the Anti-Injunction Act, which permit federal injunctions of state judicial proceedings "[1] as expressly authorized by Act of Congress, or [2] where necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." The application of any one of these three independent exceptions is sufficient to justify injunctive relief here.

The Third Circuit denied injunctive relief under the "expressly authorized" exception based largely on a misguided expansion of its previous decision in *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. denied*, 493 U.S. 1074 (1990). As discussed *infra* Part B, the state court had jurisdiction in *Musisko* (even though it may have applied the wrong law), and the state court's concurrent jurisdiction was key to the denial of injunctive relief. The state court in *Nobers II* does not have concurrent jurisdiction, and therefore *Musisko* has no precedential bearing on this case. The Third Circuit

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preempted by ERISA *and* subject to exclusive federal jurisdiction under ERISA. ERISA sections 514(a), 502(a)(3), (e)(1).

denied injunctive relief under the "necessary in aid of jurisdiction" exception because of an overly narrow reading of the exception, and misplaced concerns regarding judicial comity – judicial comity is meaningless where the state court simply lacks jurisdiction. *See infra* Part C. Finally, the Third Circuit denied injunctive relief under the third statutory exception primarily because of mistaken reluctance to reexamine an earlier request for injunctive relief. *See infra* Part D.

The Third Circuit erred as to the application of all three exceptions. Its misconstruction of the first two exceptions is especially problematic because of their general application – not only in this case – but as to all proceedings that threaten ERISA's mandate of exclusive federal jurisdiction. *See infra* Part A.

ARGUMENT

ERISA provides a civil remedial scheme that is for the most part enforceable only in the federal court system, to the exclusion of state judiciaries. The matter of jurisdiction under ERISA must be considered in tandem with – but separate from – ERISA's preemption of state law. This Court has already issued opinions in a series of cases that establish the very broad outlines of ERISA's preemption of state law.[4] The instant question of jurisdiction to adjudicate ERISA claims is separate from, but no less important than, the question of ERISA preemption.

This case presents an excellent opportunity, based on clearly defined factual and legal issues, to provide guidance regarding the implementation of ERISA's important and unusual jurisdictional scheme, in the context of whether the

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[4] *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990); *FMC Corp. v. Holliday*, 111 S. Ct. 403 (1990); *Massachusetts v. Morash*, 490 U.S. 107 (1989); *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825 (1988); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985); *Shaw v. Delta Air Lines*, 463 U.S. 85 (1983); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1982); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

statutory exceptions to the Anti-Injunction Act, 28 U.S.C. §2283, permit the federal courts to enjoin state judicial proceedings that violate ERISA's jurisdictional scheme. The lower courts' failure to protect the exclusive jurisdiction of the federal courts has caused tremendous problems in this case which, if uncorrected, can only lead to worse problems – not just in this case, but more generally for ERISA plans and sponsoring employers. This Court should grant *certiorari* to provide guidance to the lower federal and state courts regarding ERISA jurisdiction, and in particular to instruct the lower federal courts on the question of whether, how and under what circumstances they are empowered to enforce the exclusive federal jurisdiction mandated by ERISA.

A. ERISA's Carefully Drawn Jurisdictional Scheme Severely Restricts State Court Jurisdiction

To understand why injunctive relief must be available, it is imperative first to recognize the unusual nature of the jurisdictional scheme implemented in ERISA. Virtually all legal disputes that arise within ERISA's comprehensive framework may *only* be adjudicated in the federal courts. This is explicitly and unambiguously stated in section 502(e)(1) of ERISA, which provides (emphasis added) that "the district courts of the United States shall have *exclusive* jurisdiction" of most claims that come within the broad scope of ERISA's preemption.

ERISA's jurisdictional scheme is by explicit and deliberate legislative design. Congress implemented it only after considering and rejecting several alternatives, including early proposals which (1) would have made the state courts the

primary avenue for judicial enforcement of ERISA,[5] and (2) envisioned selective preemption of state law.[6]

The initial legislative drafts were abandoned in favor of a scheme that extensively preempts state law, and that also sharply curtails state court jurisdiction so as to direct substantive litigation to the federal courts.[7] In the jurisdictional scheme that Congress enacted, there is only a single type of ERISA claim over which the federal *and* state courts *share* concurrent jurisdiction; claims by participants and beneficiaries *against ERISA benefit plans* to recover benefits, or to enforce or clarify benefit rights governed by the terms of the *plans*, are enforced pursuant to ERISA section 502(a)(1)(B), and subject to concurrent state and federal court jurisdiction under ERISA section 502(e)(1). Judicial review of this type of claim – whether in state or federal court – is circumscribed

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[5] The House of Representatives originally proposed concurrent jurisdiction across the board, with limited federal court jurisdiction. H.R. 2, 93d Cong., 1st Sess. § 106(g)(1) & (h) (1973), *reprinted in* 1 Staff of Senate Comm. on Labor and Public Welfare, 94th Cong., 2d Sess., Legislative History of the Employee Retirement Income Security Act of 1974 at 3, 34-35 (Comm. Print 1976) [hereinafter Legislative History]. The initial Senate bill agreed that federal and state courts should have concurrent jurisdiction over all ERISA claims, but provided somewhat more liberal access to the federal courts. S. 4, 93d Cong., 1st Sess. § 604 (1973), *reprinted in* 1 Legislative History, *supra*, at 93, 184.

[6] S. Rep. No. 127, 93d Cong., 1st Sess. 35 (1973), *reprinted in* 1974 U.S. Code Cong. & Admin. News 4838, 4871, *and in* 1 Legislative History, at 587, 621; H.R. Rep. No. 533, 93d Cong., 1st Sess. 17 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4655, *and in* 2 Legislative History, *supra*, at 2348, 2364. Congressional leaders eventually recognized, however, that selective preemption would "raise[] the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws." 120 Cong. Rec. 29942 (1974), *reprinted in* 3 Legislative History, *supra*, at 4733, 4770-71 (statement of Sen. Javits).

[7] Staff of the House and Senate Conferees on H.R. 2, Summary of Differences Between the Senate Version and the House Version of H.R. 2 to Provide for Pension Reform, pt. 3, at 26 (Comm. Print 1974), *reprinted in* 3 Legislative History app., *supra*, at 5249, 5276 (recommending limited state court jurisdiction); H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 76 (1974), *reprinted in* 3 Legislative History, *supra*, at 4277, 4350-52 (enacting Staff recommendation of limited state court jurisdiction).

and fact specific because rights to receive benefits are established by the terms of individual plans, and because the plans must be interpreted in the first instance by their administrators.[8] Concurrent state court jurisdiction of such claims does not threaten the unity of ERISA's regulatory scheme because of the narrow scope of judicial review.

Congress chose to funnel all other ERISA claims exclusively to the federal courts to provide uniform federal development of the law in this complex and sensitive area. *See McClendon*, 111 S. Ct. at 484.[9] Federal courts are the only forums that have jurisdiction to sort out the rights and liabilities of all affected parties (including plan sponsors and fiduciaries) in a comprehensive manner.

This is an unusual scheme. It is understandable that the lower courts are unclear about the implications of ERISA's exclusive federal jurisdiction. Having preempted state law, ERISA substitutes its own complex remedial scheme, which ousts the state courts of jurisdiction over all but a single narrow subclass of the remedies that ERISA provides (those claims governed by section 502(a)(1)(B)).

Statutes that, like ERISA, mandate exclusive federal jurisdiction are few and far between. Most federal statutes create federal causes of action that may be enforced in both

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[8] Even in cases where the standard of judicial review of the plan administrator's determination is plenary, *see Bruch*, 489 U.S. 101, the substance of the court's review is constrained by the terms of the benefit plan in question.

[9] *See also* 120 Cong. Rec. 29933 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5177, 5188, *and in* 3 Legislative History, *supra*, at 4733, 4745 (remarks of Sen. Williams); Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 327 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 5038, 5107, *and in* 3 Legislative History, *supra*, at 4518, 4594. For example, ERISA section 510 is a "substantive" provision that must be enforced in the federal courts; it confers a right to be free of interference with benefit entitlements – a right that exists independent of the terms of any particular plan. ERISA's provisions governing the duties of plan fiduciaries, sections 401-414, are another example of the substantive provisions of title I of ERISA that must be enforced in the federal courts.

federal and state courts.[10] The very few federal statutes that mandate exclusive federal jurisdiction usually concern matters of such an obviously federal nature that litigants and courts alike generally recognize that claims arising in that area belong in the federal courts, so that there is minimal confusion regarding whether state courts have jurisdiction.[11] ERISA is different precisely because it *withholds* jurisdictional authority from the state courts, in an area where the state courts previously had jurisdiction and state law previously dominated.

Various state law causes of action (largely in contract) that the state courts once had jurisdiction to entertain have now been preempted by ERISA and replaced by ERISA claims that the state courts largely lack jurisdiction to entertain. As this case amply illustrates, state and federal courts are still wrestling with the effects of ERISA's total restructuring of the law in this area.

B. ERISA "Expressly Authorizes" Injunctive Relief Within The Meaning Of The Anti-Injunction Act

The Anti-Injunction Act, 28 U.S.C. § 2283, provides (emphasis added): "A court of the United States may not grant an injunction to stay proceedings in a State court *except [1] as expressly authorized by Act of Congress, or [2] where*

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[10] *E.g., Yellow Freight Sys. v. Donnelly*, 494 U.S. 820 (1990) (Title VII of the Civil Rights Act of 1964); *Tafflin v. Levitt*, 493 U.S. 455 (1990) (Racketeer Influenced and Corrupt Organizations Act); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981) (Outer Continental Shelf Lands Act); *Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962) (section 301 of the Labor Management Relations Act).

[11] Federal statutes do not always provide remedies that, like ERISA's remedies, displace existing state law remedies. Instead, federal statutes often forge new ground – as is the case, for example, with federal antitrust and civil rights legislation. Furthermore, the primacy of federal law and federal jurisdiction in areas such as bankruptcy and patents is well known and widely acknowledged. Even in areas where a federal statute does not mandate exclusive federal jurisdiction, the federal nature of the claim may be so obvious that litigants and courts are inclined to assume (sometimes erroneously) that the federal courts have exclusive jurisdiction. *See, e.g., Yellow Freight*, 494 U.S. at 822 n.2; *Tafflin*, 493 U.S. at 458 n.1.

necessary in aid of its jurisdiction, or [3] to protect or effectuate its judgments." Contrary to the Third Circuit's conclusion, ERISA is a statute that "expressly authorizes" injunctive relief.

This Court has provided the following guidance as to the form of "express authorization" sufficient to justify application of this exception to the Anti-Injunction Act:

> In the first place, it is evident that, in order to qualify under the "expressly authorized" exception of the anti-injunction statute, a federal law need not contain an express reference to that statute [ ]. Indeed, none of the previously recognized statutory exceptions contains any such reference. Secondly, a federal law need not expressly authorize an injunction of a state court proceeding in order to qualify as an exception. Three of six previously recognized statutory exceptions contain no such authorization. Thirdly, it is clear that in order to qualify as an 'expressly authorized' exception to the anti-injunction statute, an Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding.

Mitchum v. Foster, 407 U.S. 225, 237 (1972) (footnotes and citation omitted).

ERISA certainly falls within the test articulated in *Mitchum*. ERISA section 502(e)(1) prohibits the state courts from exercising jurisdiction over ERISA-preempted claims – with the sole exception that state courts share concurrent jurisdiction over claims governed by ERISA section 502(a)(1)(B). *See supra* Part A. ERISA section 502(a)(3) provides that ERISA plan participants, beneficiaries and fiduciaries may seek injunctions against acts or practices that violate ERISA or the terms of an ERISA plan. Read together, ERISA sections 502(a)(3) and (e)(1) provide ample statutory "authorization" for the federal courts to enjoin the state courts from attempting to exceed the jurisdiction allocated to them under ERISA. Moreover, ERISA's remedial scheme is "a specific and uniquely federal right or remedy, enforceable in

a federal court of equity, that c[an] be frustrated if the federal court were not empowered to enjoin a state court proceeding." *See Mitchum*, 407 U.S. at 237.

Exceptional federal statutes that, like ERISA, mandate exclusive federal jurisdiction have been found to "expressly authorize" injunctive relief.[12] The Emergency Price Control Act of 1942, 56 Stat. 24-26, 36-37 (expired 1947) was such a statute. Like ERISA, the Emergency Price Control Act implemented a complex and mixed jurisdictional scheme, in part permitting concurrent state and federal court jurisdiction, and in part providing for exclusive jurisdiction in the federal Emergency Court of Appeals. This Court, upon analyzing the jurisdictional scheme, held that the Emergency Price Control Act authorized federal injunctions within the meaning of the Anti-Injunction Act:

> Congress [] preempted jurisdiction in favor of the Emergency Court *to the exclusion of state courts*. The rule expressed in [the Anti-Injunction Act] which is designed to avoid collisions between state and federal authorities (*Toucey v. New York Life Ins. Co.*, [314 U.S. 118 (1941)]) thus does not come into play. The powers of the District Court under § 205(a) of the Act and § 24(1) of the Judicial Code are ample authority for that court to protect the exclusive federal jurisdiction which Congress intended.

Bowles v. Willingham, 321 U.S. 502, 510-11 (1944) (emphasis added) (footnote omitted). The Third Circuit's distinction of *Bowles* (i.e., *Bowles* "has no application" because it involved the Emergency Price Control Act, and not ERISA) is entirely unpersuasive. (*See* App. at 13a n.4.) The language of ERISA section 502(e)(1) is similar to the language of the Emergency Price Control Act,[13] and must likewise "expressly

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[12] The federal courts have had little opportunity to consider the application of the Anti-Injunction Act in the context of exclusive federal jurisdiction, since there are very few federal statutes that mandate exclusive federal jurisdiction. *See supra* pp. 10-11.

[13] Section 204(d) of the Emergency Price Control Act, like ERISA section 502(e)(1), employed the phrase "exclusive jurisdiction" to

authorize" injunctions of state court proceedings. Bankruptcy proceedings are another area where the federal courts have some degree of "exclusive" jurisdiction, *see* 28 U.S.C. § 1334; Benjamin Weintraub & Alan N. Resnick, *Bankruptcy Law Manual* ¶ 6.04[1], at 6-13 (1992), and the lower federal courts recognize their authority to enjoin state court proceedings that interfere with bankruptcy court jurisdiction. *See In re Johns-Manville Corp.*, 801 F.2d 60, 63-64 (2d Cir. 1986); *In re Chicago, Milwaukee, St. Paul and Pacific RR.*, 738 F.2d 209 (7th Cir. 1984).

The Third Circuit recognized that the Pennsylvania courts do not have jurisdiction to entertain the claims alleged by Respondents in *Nobers II*:

> [E]ven if *Nobers II* had been properly brought under ERISA, federal jurisdiction over the [Respondents'] claim would have been exclusive.

(App. at 11a) (citation omitted). However, the Third Circuit became sidetracked, noting that (App. at 16a-17a):

> The only Supreme Court case on [the express authorization exception] since *Mitchum* is *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977), where the Court split three ways over whether section 16 of the Clayton Act, 15 U.S.C. § 26, "expressly authorized" injunctions against state court proceedings that themselves violated the antitrust laws.

Vendo is inconclusive as to whether injunctions are "expressly authorized" by the Clayton Act.[14] Regardless whether the Clayton Act does or does not "expressly authorize" injunctive relief, there is one very important difference between the Clayton Act and ERISA: the Clayton Act no-

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describe the jurisdiction of the federal courts (i.e., the federal Emergency Court of Appeals). *See Bowles*, 321 U.S. at 510 & n.5.

[14] *Vendo* held that the state court proceeding in question should not be enjoined. However, as the Third Circuit noted, (App. at 18a), "six Justices seemed to believe that the Clayton Act authorizes injunctions of some state court proceedings [].''

where expressly provides for exclusive federal jurisdiction;[15] ERISA expressly does. *Vendo* should in no way inhibit the federal courts from issuing injunctions to enforce ERISA's explicit requirement of exclusive federal jurisdiction. Instead of recognizing that ERISA's exclusive federal jurisdiction authorizes injunctive relief – as the Sixth and Second Circuits have done – the Third Circuit illogically tacked from *Vendo* to conclude otherwise.

Contrary to the view of the panel below, *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989), *cert. denied*, 493 U.S. 1074 (1990), does not compel the conclusion that the Anti-Injunction Act bars an injunction here. *Musisko* involved a state court claim for benefits against an insurer-administrator of a plan, and therefore the state court had concurrent jurisdiction under section 502(a)(1)(B) and (e)(1). *See Taylor*, 481 U.S. 58. The state court in *Musisko* did have *jurisdiction*, even though it may have applied the wrong legal standards. Concurrent jurisdiction was central to the rationale that an injunction was not warranted, 885 F.2d at 1177:

> Indeed, the very act of delegating concurrent jurisdiction to the state courts for resolution of beneficiaries' claims [i.e., under ERISA section 502(a)(1)(B)] is evidence of Congress' satisfaction that state tribunals would fairly and completely adjudicate such cases. In contrast to the misgivings about state courts articulated in section 1983's legislative history, *see Mitchum*,[]the grant of jurisdiction to the state judiciaries to resolve ERISA claims represents a congressional vote of confidence.

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[15] Section 16 of the Clayton Act simply provides that injunctive relief is available, and that the statute may be enforced in the federal courts. Clayton Act section 16, 15 U.S.C. § 26. *Cf.* Clayton Act § 11(d), 15 U.S.C. § 21(d) (enforcement actions by federal agencies carry an exclusive right of appeal in the federal courts of appeal). Federal statutes that, like the Clayton Act, do not specify exclusive federal jurisdiction, permit concurrent state court enforcement. *Tafflin*, 493 U.S. 455 (Racketeer Influenced and Corrupt Organizations Act); *Yellow Freight*, 494 U.S. 820 (Title VII of the Civil Rights Act of 1964); *Gulf Offshore*, 453 U.S.C. 473 (Outer Continental Shelf Lands Act); *Dowd Box*, 368 U.S. 502 (section 301 of the Labor Management Relations Act).

The panel below failed to recognize that it is perfectly logical and consistent to deny injunctive relief in *Musisko* because of the state court's concurrent jurisdiction there, and to simultaneously provide injunctive relief here. Instead, the panel erroneously expanded *Musisko*.

The Third Circuit has mistakenly taken the extreme position that the Anti-Injunction Act bars all injunctive relief to enforce ERISA's preemption and jurisdictional scheme.[16] Injunctive relief may be unavailable or inappropriate in some cases; this is not one of them. As to "expressly authorized," the better conclusion – by far – is that the Anti-Injunction Act permits injunctive relief to enforce exclusive federal jurisdiction under ERISA, and prohibits injunctions for those actions in which ERISA allows the state courts to share concurrent jurisdiction with the federal courts.[17] This approach is simple and straightforward; it more than amply justifies injunctive relief in this case, and satisfies concerns for judicial comity, *see infra* pp. 19, 21-22. Otherwise, if the Anti-Injunction Act is construed to bar injunctions even in a case such as this one, what recourse is left to affected persons (such as Petitioner Plans) who are constrained by ERISA to seek adjudication of their rights and liabilities *only* in the federal courts?

The Third Circuit may have been influenced by a mistaken belief that Petitioners are unaffected by Respondents' state court litigation. (*See* App. at 20a.) This premise is false. The state court litigation purports to adjudicate rights to benefit eligibility in the guise of a trumped up employment dispute that is so patently a sham that the Third Circuit implored the state courts of Pennsylvania to – in effect – do

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[16] Conflicting decisions in other circuits are discussed *infra at* Part E.

[17] A third approach would make injunctive relief always available under the Anti-Injunction Act to enforce ERISA's preemption and jurisdictional scheme, but permit federal abstention, especially in cases where the state court has concurrent jurisdiction under ERISA section 502(a)(1)(B) and (e)(1). *See Mitchum*, 407 U.S. at 243 (although the Anti-Injunction Act does not bar injunctions to enforce 28 U.S.C. § 1983, abstention may be appropriate in some instances).

the right thing and dismiss the lawsuit.[18] The fact that Respondents' former employer (and its shareholder) are potentially liable in the state court for "damages" in lieu of "benefits" clearly does create a problem for the Plans.[19]

If Respondents prevail in *Nobers II*, that judgment would purport to shift the liability for benefits from the Plans to the Plan sponsors, a result abhorrent to ERISA. ERISA section 502(d)(2). Although the Plans provide for setoff of benefits as between the Salaried Plans and the Collective Bargaining Unit Plans, Respondents stand to obtain a "double" benefit (benefits plus damages), which the Salaried Plans cannot setoff because "damages" cannot be setoff under the terms of the Plans. Even if the state court adjusts a "damages" award to account for the Plans' setoff provisions, such a setoff could cause a transfer or use of plan assets by a party in interest, in violation of ERISA section 406(a)(1)(D) and section 4976 of the Internal Revenue Code – a potentially devastating consequence for both the Plans and their sponsors. The state court judgment would *de facto* impose a duplicative "shadow" plan on the employer, contrary to Congressional intent. *See McClendon*, 111 S. Ct. at 484. Furthermore, Respondents might later attempt to invoke collateral estoppel to assert a claim for benefits against the Collective Bargaining Unit Plans and thereby recover a "triple" benefit. More impor-

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[18] The plant that employed Respondents is closed. There is no possibility of continued employment. The sole issue is benefits. *See infra* Part G. As the Third Circuit recognized (App. at 11a): "even if *Nobers II* had been properly brought under ERISA, federal jurisdiction over the appellees' claim would have been exclusive."

[19] Petitioner Plans are creatures of federal law. They are freestanding entities under ERISA, much as corporations are freestanding entities under state corporation laws. But the Plans are created and funded by sponsoring employers, and cover employees at other locations. The relationship between an ERISA plan and its sponsor is complex and minutely regulated. Petitioner Plans – not Respondents' former employer (or its shareholder) – are the only entities with liability for benefits due under their terms. ERISA section 502(d)(2). Furthermore, ERISA protects the Plans from unauthorized state law expansion of their duties and liabilities. ERISA also protects plan sponsors from imposition of liability that rightly lies with the Plans. *See McClendon*, 111 S. Ct. at 484.

tantly, Respondents' deliberate forum shopping – if permitted – encourages the state courts to create independent phantom pension programs that would purportedly escape ERISA's framework.

This scenario of conflicting legal standards and liabilities is exactly what Congress wanted to eliminate. Congress sought uniformity and enacted ERISA to achieve that goal.

Petitioners, who are mindful that the state courts would be assessing "damages" based on the terms of the Plans, have a right to request declaratory judgment of the federal – and not the state – court.[20] If *Nobers II* were properly situated in federal court, Petitioner ERISA Plans would be authorized under ERISA to intervene in the federal court and obtain conclusive resolution of their rights and liabilities.[21] However, Petitioners are simply not empowered to intervene in the state court forum where *Nobers II* now lies. Petitioners are understandably unwilling to "intervene" in the state court, since Petitioners know full well that (1) the state court lacks jurisdiction, and (2) Petitioners cannot confer jurisdiction on the state court by consent, *see, e.g., International Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 398-99 (1986).

If the state court litigation were of such a nature that the state court had jurisdiction to enter judgment (i.e., a claim under ERISA section 502(a)(1)(B) against the Plans similar to that alleged in *Musisko*), then there would be no potential for conflicting state and federal judgments – because the state court would be properly adjudicating a claim with the proper parties before it. But that is not the case here. The *Nobers II* claims, as alleged against Colt and Crucible, cannot

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[20] Injunctive relief should be available to enforce the declaratory judgment. *See Shaw*, 463 U.S. at 96 n.14 (injunctive relief is available to enjoin state officials from interfering with federal rights).

[21] One of the Petitioner Plans moved to intervene in *Nobers I*; the district court entered summary judgment before reaching the motion. Furthermore, the trustee of another of the Plans was named as a defendant in *Nobers I*.

be heard just as well in state as in federal court.[22] But if the state court acts without jurisdiction, and enters a judgment conflicting with the federal court judgment, which judgment prevails, and which judgment applies, for which persons? Certainly, such judicial clashes are far more injurious to judicial comity than federal injunctions issued at an earlier stage of the state court proceedings. *See infra* pp. 21-22. Concerns about judicial comity can most simply and effectively be addressed by recognizing that the Anti-Injunction Act permits injunctive relief *before* void judgments are entered.

The mandate of exclusive federal jurisdiction under ERISA – for most of the claims preempted by ERISA – is perfectly clear. If the Anti-Injunction Act exception for injunctions "expressly authorized by Act of Congress" means anything, it must certainly mean that injunctions are permitted to enforce the exclusive federal jurisdiction mandated by ERISA, and to enforce judgments (such as the declaratory judgment Petitioners have requested) rendered pursuant to the exclusive jurisdiction of the federal courts. The federal courts will undermine ERISA – and the stability it provides – if they are unwilling to issue injunctions to enforce ERISA's jurisdictional scheme.

C. Injunctive Relief Is "Necessary In Aid Of" The Exclusive Federal Jurisdiction Mandated By ERISA

The facts of this case make clear why injunctive relief is "necessary in aid of" exclusive federal jurisdiction under ERISA.[23] ERISA *in toto* (Titles I through IV) provides a

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[22] ERISA dictates that: (1) claims for benefits may be asserted in either state or federal court and *must be asserted against the applicable Plans*, but only after exhaustion of administrative remedies; whereas (2) claims against an employer or other third party (i.e., Crucible and Colt) for interference with rights to benefits entitlements *must be asserted in federal court* pursuant to ERISA section 510. *See McClendon*, 111 S. Ct. at 483.

[23] The difference between the "necessary in aid of jurisdiction" exception, and the "expressly authorized" exception, may be somewhat blurred in their application to statutes that confer some measure of exclusive federal jurisdiction. The Third Circuit's interpretation of this exception as "narrow and [] only in aid of a court's exclusive jurisdiction over a particular case" (App. at 13a) unnecessarily limits the plain meaning of the

singular comprehensive federal remedial scheme designed to address the rights and liabilities of all affected parties. If the lower courts attempt to allocate liabilities outside of that remedial scheme, then the balance carefully crafted by Congress is destroyed.

Petitioners have asked the district court to declare that Respondents are receiving all the benefits to which they are entitled under the Plans in which they are entitled to participate. Petitioners seek this declaratory judgment because Respondents have alleged *enforceable, remediable* rights that allegedly entitle Respondents to receive benefits under the terms of the Collective Bargaining Unit Plans, rather than the Salaried Plans. *See Bruch*, 489 U.S. at 112; *see also Winstead v. J.C. Penney Co.*, 933 F.2d 576 (7th Cir. 1991); Restatement (Second) of Trusts § 259 (1959). Petitioners' request is authorized by ERISA section 502(a)(3), and is itself subject to exclusive federal jurisdiction under section 502(e)(1) of ERISA – Petitioners are not authorized under ERISA to request the state courts to allocate liabilities among them. Surely, if the district court finds that Respondents are already receiving the correct benefits from the correct Plans, then the district court has authority to enjoin Respondents from invoking preempted contract law principles to reach a contradictory result. Such an injunction is "necessary in aid of" the exclusive federal jurisdiction mandated by ERISA.

The district court in *Nobers I* instructed Respondents to apply directly to the Collective Bargaining Unit Plans and exhaust administrative remedies. This instruction comports with the terms of the Plans and ERISA, which mandate that the Plans' administrators are to interpret the terms of the Plans. ERISA sections 402, 503; *see Bruch*, 489 U.S. 101.[24]

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statutory language. Because statutes requiring exclusive federal jurisdiction are so rare, the federal courts have had little opportunity to consider whether exclusive federal jurisdiction activates the second Anti-Injunction Act exception as well as the first. Petitioners propose that it does – i.e. the phrase "necessary in aid of its jurisdiction" encompasses "necessary in aid of *exclusive federal* jurisdiction."

[24] It is not immediately evident how benefits would be calculated in a situation where an employee is placed in a particular job status solely for the purpose of making that employee eligible for certain benefits.

Instead, Respondents reinstated litigation (*Nobers II*) in a different forum. Worse, the state court forum that Respondents have chosen lacks jurisdiction over the claims Respondents have alleged against Colt and Crucible. (App. at 11a.) Worse yet, the Pennsylvania courts appear wilfully oblivious to their lack of jurisdiction.

Petitioners have asked the district court to compel Respondents to apply to the Plans for the benefits they seek. If Respondents disagree with the administrative outcome, *then* they may bring suit *against the Plans* in state or federal court. This is not an optional choice; it is the procedure mandated by Congress – an integral part of ERISA's administrative scheme.[25] Surely, the district court may compel Respondents to exhaust administrative remedies in lieu of pursuing state court litigation.

The Third Circuit, although recognizing that Respondents are violating ERISA's express remedial and jurisdictional scheme, declined to provide injunctive relief, invoking judicial comity and citing *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970). (App. at 11a-15a.) The Third Circuit failed to recognize that the state courts did have jurisdiction in *Atlantic Coast Line*.[26] *Atlantic Coast Line* is thus unlike the present action. Here, the Pennsylvania courts completely lack jurisdiction. *See Capital Serv., Inc. v. NLRB*, 347 U.S. 501, 504-05 (1954) ("[W]here Congress [] has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding."); *see also Bowles v. Willingham*, 321 U.S. 502, 511 (1944). Concerns for judicial comity are inappli-

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[25] *See* Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 1280, 93d Cong., 2nd Sess. 327, *reprinted in* 1974 U.S.C. C.A.N. 4639, 5107, *and in* 3 Legislative History, *supra*, at 4277, 4594; *see also Bruch*, 489 U.S. 101.

[26] *Atlantic Coast Line* followed from this Court's decision a year earlier in *Brotherhood of R.R. Trainmen v. Terminal Co.*, 394 U.S. 369 (1969), in which this Court observed that: "*[E]ven though the Florida courts may have jurisdiction over this litigation*, the application of state law is limited by paramount federal policies []." 394 U.S. at 382 (emphasis added).

cable to ERISA-preempted claims (such as the claims in *Nobers II*) that simply do not belong in state court. *See International Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 398-99 (1986) ("[W]here state law is pre-empted by the NLRA under *Garmon* and our subsequent cases, the state courts lack the very power to adjudicate the claims that trigger pre-emption."); *Bowles*, 321 U.S. at 512 ("[T]he authority of Congress to withhold all jurisdiction from the state courts obviously includes the power to restrict the occasions when that jurisdiction may be invoked."). It is pointless to allow state courts to enter patently void judgments for the sake of misguided comity concerns;[27] such judgments must eventually be recognized as the nullities they truly are.[28] Comity cannot create jurisdiction where Congress withheld it. The Third Circuit's unwarranted and extreme stance on the scope of the Anti-Injunction Act can ultimately destroy ERISA's goal of uniform federal regulation.

D. Injunctive Relief Is Authorized To "Protect Or Effectuate" Prior And Prospective Judgments Of The District Court

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[27] It is a universal and basic principle that *any* court must dismiss any lawsuit at any time it appears that the court lacks subject matter jurisdiction. *See, e.g.*, Fed. R. Civ. P. 12(h)(3); *Cadillac Ins. Co. v. L.P.C. Distrib. Co.*, 770 S.W.2d 892, 895 (Tex. Ct. App. 1989) (citing *International Longshoreman's Ass'n v. Davis*, 476 U.S. 380 (1986)). This is true even if the court previously determined that it had jurisdiction, and regardless how far the litigation has progressed. Here, a federal court (instead of the state court itself) may be in the position of reversing the state court's previous decision regarding subject matter jurisdiction, in order to implement the unambiguous congressional intent behind ERISA. Although comity concerns may come to mind, they are misplaced. The federal courts *must* entertain ERISA cases and accordingly *must* entertain questions as to whether state court proceedings violate ERISA's mandate of exclusive federal jurisdiction. This duty flows naturally from this mandate.

[28] As one court observed in the bankruptcy context:

> [A] federal court does not have to give full faith and credit to a state court judgment if the state court did not have jurisdiction over the subject of the litigation or of the parties before it.

In re Brady, Texas, Municipal Gas Corp., 936 F.2d 212, 218 (5th Cir.) (citations omitted), *cert. denied sub nom. Sanders v. City of Brady, Tex.*, 112 S. Ct. 657 (1991).

The district court has ample authority under either of the first two exceptions to the Anti-Injunction Act to enjoin prosecution of *Nobers II*, based on the explicit provisions of ERISA. On the facts of this case, an injunction is also warranted under the third Anti-Injunction Act exception,[29] in order to "protect or effectuate" (1) the district court's judgment in *Nobers I*; or (2) the declaratory judgment that Petitioners have requested in this action.

The Third Circuit was unwilling "to reexamine" the application of this exception, in light of the holding in the previous action for injunctive relief brought by Colt and Crucible in *Colt Industries v. Nobers*, No. 85-563 (W.D. Pa. Aug. 12, 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986). (App. at 21a.) There, Colt and Crucible sought an injunction on the grounds that the claims alleged against them in the state court had already been (or should have been) adjudicated in *Nobers I*.

The Third Circuit missed the point when it demurred that Petitioners were not parties to *Nobers I*. The district court in *Nobers I* instructed Respondents to apply *to Petitioner Plans* for benefits. By instead bringing suit in state court, Respondents defy the district court's judgment, and also run afoul of the administrative mechanisms provided by the Plans pursuant to ERISA's remedial scheme.[30] Since the district court in *Nobers I* instructed Respondents to exhaust the administrative remedies provided by ERISA and the terms of the Petitioner ERISA Plans, the district court should now be able, under the third statutory exception to the Anti-Injunction Act, to enforce its previous judgment by ordering Respondents to desist from litigating *Nobers II*,[31] and comply

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[29] This exception is based upon traditional concepts of res judicata and collateral estoppel. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988); *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 644 (2d Cir. 1989).

[30] The "protect or effectuate" exception thus relates to the "necessary in aid of jurisdiction" exception on the facts of this case.

[31] The main difference between *Nobers I* and *Nobers II* is the location of the judicial forum – one is state, and the other federal. *Nobers II* is *Nobers I* with a different label. *Nobers II* is unmistakably the same as *Nobers I* with respect to (1) the underlying facts alleged; (2) the relief sought; and

with the instruction they were given in *Nobers I* to apply to the Petitioner Plans for benefits.

Furthermore, the Third Circuit erred by prospectively denying injunctive relief to enforce the declaratory judgment that Petitioners have requested here. The district court has *exclusive* jurisdiction to provide guidance to Petitioners. The Third Circuit failed to recognize that, under the third statutory exception to the Anti-Injunction Act, the district court must be able to issue an injunction to "protect or effectuate" a declaratory judgment based on the questions Petitioners have presented to the district court. Otherwise, the declaratory judgment, which Petitioners have every right to request, *see Bruch*, 489 U.S. at 112, becomes no more than an advisory opinion.

E. There Is Conflict Among The Circuit Courts Regarding The Availability Of Injunctive Relief, And Confusion Regarding The Underlying Rationale

In *General Motors Corp. v. Buha*, 623 F.2d 455, 459 (6th Cir. 1980), the Sixth Circuit explicitly held that injunctive relief is available and "that ERISA meets both prongs of the *Mitchum* test." Similarly, in *Gilbert v. Burlington Indus.*, 765 F.2d 320 (2d Cir. 1985), *aff'd mem. sub nom. Roberts v. Burlington Indus.*, 477 U.S. 901 (1986), the Second Circuit affirmed the district court's injunction against a state administrative proceeding. The Second Circuit held that ERISA section 502(a)(3) "expressly authorizes" injunctions of state proceedings, 765 F.2d at 329; this Court summarily *affirmed*. *See also Senco of Fla., Inc. v. Clark*, 473 F. Supp. 902, 905 (M.D. Fla. 1979) (Congress intended ERISA to come within the "expressly authorized" exception); *Cartledge v. Miller*, 457 F. Supp. 1146, 1152 (S.D.N.Y. 1978) (ERISA's exclusive federal jurisdiction authorizes injunctions). Furthermore, the Department of Labor has sought and been granted injunctive

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even (3) the defendants against whom relief is sought (i.e., Colt and Crucible). There is precious little difference in the legal theories advanced in *Nobers II* and *Nobers I*, and indeed Respondents' claims in *Nobers II* were implicitly encompassed (or should have been explicitly alleged) in *Nobers I*.

relief against state proceedings. *See In re Consolidated Welfare Fund ERISA Litigation*, 15 Emp. Benefits Cas. 1352 (BNA) (S.D.N.Y. 1992).

The Third Circuit cited two Fifth Circuit opinions holding that injunctive relief is unavailable (1) under ERISA, *Total Plan Servs. v. Texas Retailers Ass'n*, 925 F.2d 142, 145 n.2 (5th Cir. 1991) and (2) under the Longshore and Harbor Workers Compensation Act, 33 U.S.C. §§ 901-950 ("LHWCA"), *Texas Ins. Ass'n v. Jackson*, 862 F.2d 491 (5th Cir. 1988), *cert. denied*, 490 U.S. 1035 (1989). (App. at 20a-21a n.8 & 12a-13a.) However, these cases rest on flawed reasoning.

The Third Circuit did not realize that the Fifth Circuit's opinion in *Jackson* has no bearing here, because the state court action in *Jackson* may not even have been preempted by federal law (i.e., the LHWCA), let alone subject to exclusive federal jurisdiction. The Fifth Circuit failed to realize that the LHWCA does not necessarily preempt all state law remedies. *See Peter v. Hess V.I. Corp.*, 903 F.2d 935 (3d Cir. 1990), *cert. denied*, 111 S. Ct. 783 (1991). Furthermore, the Fifth Circuit did not take into account that Congress may (1) preempt an area of law and yet permit the state courts to adjudicate claims under the federal statute, applying federal law, *see, e.g., Dowd Box*, 368 U.S. 502, or (2) preempt an area of law *and also* strip the state courts of jurisdiction, completely depriving the state judiciaries of any power to act under the area of law preempted by the statute, *see Davis*, 476 U.S. at 398-99; *see also Gorman v. Life Ins. Co. of N. Am.*, 811 S.W.2d 542, 545 (Tex.), *cert. denied*, 112 S. Ct. 88 (1991). The Fifth Circuit did not realize that the LHWCA belongs to the former category – not the latter.[32] ERISA, unlike the LHWCA, is largely the latter category.

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[32] The Fifth Circuit in *Jackson* also misinterpreted *Amalgamated Clothing Workers of Am. v. Richman Bros. Co.*, 348 U.S. 511 (1955). *Clothing Workers* held that the Taft-Hartley Act did not "expressly authorize" a *union* to obtain a federal injunction of a state court suit, because the Taft-Hartley Act authorized injunctions only on petition of the National Labor Relations Board ("NLRB"). *Id* at 516-17. The union, as a private litigant, could not obtain injunctive relief under the Taft-Hartley Act, *id.* at 519, but

The Fifth Circuit's opinion in *Total Plan Servs.* did involve ERISA. However, as in *Jackson*, the state court action in *Total Plan Servs.* may not even have been preempted by federal law.[33] As in *Jackson*, the Fifth Circuit glossed over the preemption question, glibly holding that injunctive relief is unavailable regardless of preemption. The Fifth Circuit ignored the fact that ERISA, unlike the LHWCA, explicitly deprives the state courts of jurisdiction to adjudicate most claims. Moreover, unlike the LHWCA, ERISA expressly authorizes federal lawsuits for injunctive relief to enforce ERISA and the terms of ERISA plans. ERISA, unlike the LHWCA, provides compelling authority to permit injunctions against state court proceedings in appropriate circumstances.

The Third Circuit focused on the outcomes of *Jackson* and *Total Plan Servs.*, and ignored the flaws in the underlying analyses. Furthermore, the Third Circuit did not recognize that the validity of *Total Plan Servs.* is uncertain in light of the Fifth Circuit's subsequent decision in *E-Systems, Inc. Hosp. Med. & Surgical Ins. Plan v. Pogue*, 929 F.2d 1100 (5th Cir.), *application for stay granted*, 112 S. Ct. 1 (Scalia, J.), *cert. denied*, 112 S. Ct. 585 (1991), holding that ERISA authorizes the federal courts to enjoin enforcement of a state tax indirectly imposed on plans, overriding the bar of the Tax Injunction Act.[34] If ERISA authorizes an injunction in the face of the Tax Injunction Act, then an injunction ought to be available under either or both of the first two exceptions to the Anti-Injunction Act. The Tax Injunction Act is of at least comparable - and perhaps broader - scope than the

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the district court could have enjoined the state proceedings on petition of the NLRB. *Id.* at 520.

[33] The state court lawsuit in *Total Plan Servs.* was an action for breach of contract by an employer association against an insurance company. Contracts between employers and service providers such as insurance companies generally escape ERISA preemption. *See Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 833 (1988).

[34] "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of the State." 28 U.S.C. § 1341.

Anti-Injunction Act. Furthermore, indirect state taxation is a less direct threat to ERISA's integrity than state law remedies directly paralleling remedies provided by ERISA.[35]

The confusion and conflict in the lower courts regarding the availability of injunctive relief can only worsen with time, because of the scarcity of authoritative guidance on the topic of exclusive federal jurisdiction. This Court can and should take this opportunity to articulate a standard that the lower federal courts can consistently apply.

F. This Court Has Already Indicated That Injunctive Relief May Be Available

This Court has already touched on equitable remedies and injunctive relief in *Shaw v. Delta Air Lines*, 463 U.S. 85 (1985). *Shaw* was a federal lawsuit by plan sponsors against a state official, seeking a declaratory judgment of ERISA's preemptive effect *and injunctive relief* against enforcement. 463 U.S. at 93 n.9 (noting that district court had granted injunction). Since state officials can be expected to resort to state judiciaries to enforce state laws, enjoining state officials from enforcement is the functional equivalent of enjoining state judicial proceedings.

This Court noted in *Shaw*, 463 U.S. at 96 n.14, that plan sponsors could request declaratory judgment and even obtain injunctive relief under general principles:

> A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.

Petitioners here are authorized to seek injunctions and "other appropriate equitable relief" under section 502(a)(3)

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[35] The Third Circuit's opinion in *Rosa v. Resolution Trust Corp.*, 938 F.2d 383 (3d Cir.), *cert. denied*, 112 S. Ct. 582 (1991), adds to the confusion. *Rosa* directed the district court to vacate an injunction – not because injunctive relief is unavailable, but rather because the district court had attempted to enjoin acts specifically permitted by ERISA.

of ERISA.[36] If, as this Court recognized in *Shaw* (and implicitly reconfirmed by denying *certiorari* after granting a stay in *E-Systems*), injunctive relief against state court officials is available to enforce ERISA preemption, then certainly injunctive relief should be available against state judicial proceedings to enforce exclusive federal jurisdiction under ERISA.

G. This Case Provides A Uniquely Suitable Opportunity For This Court To Articulate Whether, And Under What Circumstances, Injunctive Relief Is Available To Enforce ERISA's Exclusive Federal Jurisdiction

Sooner or later, this Court will no doubt need to consider whether, and under what circumstances, injunctive relief is available to enforce ERISA's exclusive federal jurisdiction. This case provides a uniquely suitable opportunity to take up this issue, because the problem is clearly delineated on the facts of this case, and because this case is uncluttered by extraneous issues.

There may be cases where claims asserted in state court mix issues that are subject to ERISA preemption and exclusive federal jurisdiction with issues that are governed by other federal or state law that can be adjudicated in the state courts. This is not one of them. This case is uncluttered, for example, by employment law issues that the state courts retain jurisdiction to adjudicate. The plant where Respondents were employed is closed. There was no possibility of continued employment, nor have Respondents demanded relief flowing from rights to continued employment. The only question is, what benefits are Respondents entitled to receive, based on their historical service and status as of the time of the plant closing? Both Respondents and Petitioners

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[36] *Compare Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 (1982) (federal court does not have removal jurisdiction over state court action brought by state officials seeking a declaratory judgment regarding ERISA's preemptive effect, since, *inter alia*, state court officials are not authorized to seek such equitable relief under section 502(a) of ERISA) *with Shaw*, 463 U.S. at 96 n.14 (plan sponsors, unlike state officials, may seek declaratory judgment).

are focused on this same, singular question, albeit Respondents have chosen to seek resolution in a forum that lacks jurisdiction. This is as purely a benefits rights question as can be postulated.

The singular nature of Respondents' claims is no less true because the Superior Court of Pennsylvania failed to recognize it.[37] Despite the fact that Respondents' claims in *Nobers II* are clearly subject to exclusive federal jurisdiction, the Superior Court of Pennsylvania has directed the Court of Common Pleas to entertain the lawsuit. Despite the Third Circuit's hopeful suggestion that "[p]erhaps the Pennsylvania trial and intermediate appellate courts will now reconsider their holding" (App. at 14a), there is no mechanism readily enabling the Court of Common Pleas to reinstate its order dismissing *Nobers II*, nor any provision for mandatory review by the Superior Court.

Unfortunately, this is not an isolated aberration. There are other instances in which state courts have similarly attempted to exercise non-existent jurisdiction over ERISA preempted claims that belong in the federal courts. When this occurs, the state court usually purports to apply legal principles that have been preempted by ERISA. *See Lash v. Equibank*, 569 A.2d 1389 (Pa. Super. Ct. 1989), *aff'd*, 604 A.2d 1027 (Pa.), *petition for cert. filed*, No. 92-127, 61 U.S.L.W. 3061 (July 14, 1992) (directing trial court to exercise jurisdiction and apply state contract law to a claim that is plainly preempted by ERISA); *Morosetti v. Louisiana Land and Exploration Co.*, 564 A.2d 151 (Pa. 1989) (exercising jurisdiction and applying state contract law to an action that is plainly pre-

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[37] The Superior Court ignored this Court's teachings, and instead cited *Shaw v. Westinghouse Elec. Corp.*, 419 A.2d 175 (Pa. Super. Ct. 1980), about which it has been observed: "[T]he Supreme Court's decisions in *Pilot Life* and *[Metropolitan Life]* have foreclosed whatever support *Shaw* . . . might have lent to Straub's [non-preemption] argument." *Straub v. Western Union Tel. Co.*, 851 F.2d 1262, 1264 n.2 (10th Cir. 1988). All the relevant facts in *Shaw*, including plaintiff's termination of employment, occurred prior to the time that ERISA became effective. Plaintiff's claim in *Shaw* arose prior to the effective date of ERISA, and therefore he did have a claim under state law. Respondents here do not.

empted by ERISA). In some instances neither the litigants nor the court realize that ERISA preempts the lawsuit. In other cases, the lack of jurisdiction is called to the state court's attention to no avail.

This case illuminates the issues surrounding the availability of injunctive relief with exceptional clarity. All three exceptions to the Anti-Injunction Act are activated by the facts of this case – and the last exception is implicated in two ways (injunctive relief ought to be available to enforce the district court's judgment in *Nobers I*, as well as the declaratory judgment the district court may ultimately issue in this action). This case provides the ideal backdrop for this Court to consider the application of the Anti-Injunction Act to ERISA, and is therefore worthy of this Court's plenary consideration.

CONCLUSION

For all the reasons stated above, this petition for writ of *certiorari* should be granted.

Respectfully submitted,

WILLIAM H. POWDERLY, III
PAULA E. GANZ
JOAN C. ZANGRILLI
JONES, DAY, REAVIS & POGUE
500 Grant Street
Pittsburgh, PA 15219
(412) 394-7921

Of Counsel:

ANTHONY J. DIBUONO
COLTEC INDUSTRIES INC
430 Park Avenue
New York, New York 10022
(212) 940-0574